



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 17 2013

BY CERTIFIED U.S. FIRST CLASS MAIL
RETURN RECEIPT REQUESTED

PERMIT TO THE ATTENTION OF:
7009 1680 0000 7661 8588

Mr. Herbert J. Roder
Managing Partner
EPG2, LLC
4267 East Konker Road
Port Clinton, Ohio 43452

Re: Clean Water Act Section 308 Information Request V-404-308-13-23, Dated
April 26, 2013; Wetlands Issues on a Parcel Located in Erie Township, Ottawa
County, Ohio

Dear Mr. Roder:

We have received your response to the Information Request referenced above and dated May 13, 2013. The response is substantially inadequate in providing the information requested. For instance, submission of a single tax document purportedly referencing the property does not approach a substantial response to the first request, which reads:

Delineate the extent of your current or past property ownership with regard to the site. Provide any property deeds, Plats of Survey, Certified Survey Maps, titles, easements, property and real estate bills, or any other documentation that illustrates your property ownership or describes its location. For the purposes of answering this question, the time frame of your response is any time after you first obtained full or partial ownership interest in the site.

Similarly, your response to the fifth request reads: "Trucks, earthmovers, and bulldozers" which only begins to answer the request which reads:

Based on any earthmoving or organic debris moving activities conducted at the site, identify the types of machinery used to move or place sand, silt, clay, rock, topsoil, subsoil or fill, dredged, or organic material, by model number and year, if possible.

The wetlands involved here are adjacent to Lake Erie, the protection of which is of particular concern to the Agency. Consequently, I want to remind you that failure to substantially respond to a request for information under section 308(a) of the Clean Water Act (CWA), 33 U.S.C. § 1318(a), could subject you to enforcement under section 309 of the CWA, 33 U.S.C. § 1319,

including judicial injunction and civil administrative or judicial penalties of up to \$37,500 per day of violation of section 308.

However, we are offering you another opportunity to more completely respond to the request we previously issued. A copy of an amended document is enclosed which contains several restated requests, follow-ups to your previous answers, and several new requests. All requirements, conditions and qualifications stated in the request are incorporated into this amended request for information, including statements regarding the Paperwork Reduction Act, 33 U.S.C. §§ 3501-3520. **Your response will be due 21 calendar days after you receive this letter.**

If you have any questions or concerns regarding this request for information, please contact Greg Carlson at (312) 886-0124 or carlson.greg@epa.gov. If you have any legal questions, please contact Robert S. Guenther, Associate Regional Counsel, at (312) 886-0566 or guenther.robert@epa.gov.

We appreciate your prompt attention to this matter.

Sincerely,



Tinka G. Hyde
Director, Water Division

Enclosures: Information Request Docket No. V-404-308-13-23 and attachments

cc: Robert Guenther (w/ encls.), ORC (C-14J)

Joseph Kassler (w/ encls.), U.S. Army Corps of Engineers, Buffalo, NY

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Herbert Roder and
EPG2, LLC,
Port Clinton, Ohio,**

Respondents.

)
) **REQUEST PURSUANT TO SECTION**
) **308 OF THE CLEAN WATER ACT**
) **(CWA), 33 U.S.C. §1318(a)**
)
)
) **DOCKET NO. V-404-308-13-23A**
)

The following request is made pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the above referenced statute and duly redelegated to the undersigned Director, Water Division. This amended request for information pertains to the alleged unauthorized discharge of dredged or fill material or both into waters of the United States in conjunction with weapons testing at property north of Front Street, in Section 20, Township 7 North, Range 16 East, Erie Township, Ottawa County, Ohio ("site"). See Exhibit #1 for an illustration of the site.

INSTRUCTIONS

Please provide the information described below, *in as thorough and complete a manner as possible*, within 30 days of receipt of this request, under an authorized signature and to the address below:

Director, Water Division
U.S. EPA
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(Attention: G. Carlson (WW-16J)).

The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secret. You may, if you or EPG2 desire, assert a business confidentiality claim covering all or part of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such claim will be disclosed by EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. part 2, subpart B. If no such claim accompanies the information when it is received by EPA it may be made available to the public by EPA without further notice to you.

EPA requests this information under section 308(a) of the CWA, 33 U.S.C. § 1318(a), which provides that: "Whenever required to carry out the objective of this Act, the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment and methods (including where appropriate, biological monitoring methods), (iv) sample such effluents and (v) provide such other information as he may reasonably require; and the Administrator or his

authorized representative, upon presentation of his credentials shall have a right of entry to any premises in which an effluent source is located or in which any records are located, and may at reasonable times have access to and copy any records and sample any effluents."

The information requested below must be submitted under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to 18 U.S.C. §§ 1001 and 1341.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520, because it seeks information relevant to an ongoing enforcement action.

REQUEST FOR INFORMATION

1. Delineate the extent of your current or past property ownership with regard to the site. Provide any property deeds, Plats of Survey, Certified Survey Maps, titles, easements, and property and real estate tax bills, or any other documentation that illustrates your property ownership or describes its location. For the purposes of answering this question, the time frame of your response is any time after you first obtained full or partial ownership interest in the site.

Provide a more thorough and comprehensive response to the request above.

Additionally, in your May 13, 2013, response to this question, you provided a tax bill for 642.743 acres of property without providing a plat of survey or any illustration of where those 642.743 acres are relative to the approximately 212 acres outlined in EPA's Exhibit #1. What part of the approximately 212 acres outlined in Exhibit #1 do you, EPG2, LLC or ARES, Inc. own? Delineate which specific parcels may be owned by each company or combination of companies.

2. Provide copies of all documents and information you possess which physically describe the site, including, but not limited to:

- A) surveys, both topographic or boundary;
- B) soil borings, samples or descriptions;
- C) vegetation surveys;
- D) site hydrological surveys, e.g., plans and data characterizing ground, surface or storm water flows;
- E) engineering design or site plans (including planning, zoning or development plans);

- F) all site imagery, including satellite, aerial or ground based photographs, digital products, videotape or equivalent formats or platforms;
- G) delineations or determinations of "waters of the United States," including wetlands and streams. This includes all field notes and is not limited to formal reports; and
- H) any flood way or flood plain documentation.

Provide a more thorough and comprehensive response to the request above.

Furthermore, in your May 13, 2013, response to this question, you provided a one page excerpt (i.e., Figure 2-2 Current Site Layout Aerial Photograph – Erie Army Depot) of an unidentified larger report. Please provide a copy of the entire report.

3. For the site, provide copies of all documents that characterize any movement or placement of sand, silt, clay, rock, organic debris (i.e., vegetation that is alive or dead), topsoil, subsoil, spoil, fill or dredged material, including, but not limited to rip rap, erosion control structures, filling, grading, trenching, soil or vegetation stockpiling (even if only temporary), clearing of vegetation, dredging, culvert placement, dike or dam construction, access road construction, drag-lining, bulldozing or any other method of moving earthen material or organic debris.

If you have no records, use a narrative description in characterizing the sequence and methods of site earth work and vegetative clearing, e.g., using scaled drawings to clearly delineate site activities.

Provide a more thorough and comprehensive response to the request above.

Additionally, in your May 13, 2013, response to this question, you provided a one page oversized drawing (i.e., Attachment "C") that includes the labeling of "First Energy / Davis Besse" and "Geo. Gradel Co." Our follow-up questions are:

3a. Locate within the area diagramed by the drawing the approximately 212 acre diked area.

3b. Describe the involvement of First Energy / Davis Besse in regard to this drawing.

3c. Describe the involvement of Geo. Gradel Co. in regard to this drawing.

3d. If this drawing is part of a larger report, provide the entire report.

3e. Provide all documentation regarding the movement of material for each of the areas highlighted and circled on Exhibit #1.

4. For the work accomplished in Question No. 3, above, identify the number of days and dates during which each work event occurred.

In your May 13, 2013, response to this question, you provided Attachment C which appears to cover only a portion of the diked 212 acre site, if any. You must provide the requested

information for each of the highlighted and circled areas on Exhibit #1.

5. Based on any earthmoving or organic debris moving activities conducted at the site, identify the types of machinery used to move or place sand, silt, clay, rock, topsoil, subsoil or fill, dredged, or organic material, by model number and year, if possible.

Based on your May 13, 2013, response to this question, it is unclear whether your answer covers any area within the diked 212 acre site. Please clarify which piece or pieces of equipment were used in each of the six areas highlighted and circled on Exhibit #1.

6. **Restated:** Provide a list of all persons, contractors, or sub-contractors you or your agent may have hired or compensated for site work involving construction and development of any of the six areas highlighted and circled on Exhibit #1 and a description of the work performed by each listed party in each of the six areas.

7. Provide copies of all documents that memorialize or describe the relationship between you and any person or contractor you may have hired or compensated for site work involving the movement or placement of sand, silt, clay, rock or fill, dredged or organic materials in any part of the site. Documents may include, but are not limited to contracts, contractor payments, work logs or time records, invoices, canceled checks, receipts, or bills of sale.

In your May 13, 2013, response to this question, you avoided answering this question by stating you had no relationship to the construction site contractor. You have not identified a construction site contractor in answer to any of the questions posed in the original April 26, 2013, Request for Information. With the restated Question #6, above, please provide the documents requested in the first paragraph of this question.

8. Provide copies of all documents concerning any efforts you made or directed to determine whether the site or any portion thereof contained wetlands or other waters of the United States as defined under Federal regulations found at 40 C.F.R. part 232 and 33 C.F.R. part 328 (see Exhibit #2 for a copy of the "waters of the United States" regulatory definition). Identify all persons involved in this determination by name, title and address. Provide any field notes, maps and surveys used in this effort.

In your May 13, 2013, response to this question, you avoided answering this question by stating the Corps of Engineers has been involved in ammunition cleanup at this site for 9 to 10 years. Further, you stated "... area of the new firing range has always been noted on all documentation as 'Dry Impact AREA'". Our follow-up questions are:

8a. *The original Question #8, in the first paragraph above, is repeated in its entirety.*

8b. *Please provide all the documentation you referred to in your May 13, 2013, answer.*

8c. *Please describe and provide all documents that depict the "new firing range".*

8d. *Please clarify whether the "new firing range" is part of any of the six areas highlighted and*

circled in Exhibit #1.

9. Provide copies of all documents relating to whether you have ever applied for or received a federal permit at the site, including nationwide, regional, general, individual or after-the-fact permits, issued pursuant to the CWA, including, but not limited to section 404. Documents may include, but are not limited to, permits, permit application materials and related correspondence, or specific informational sources that address CWA programs. This includes, but is not limited to informational, educational or regulatory materials regarding section 404 of the CWA from any source.

In your May 13, 2013, response to this question, you provided in Attachment E of your response an access agreement with the U.S. Army Corps of Engineers. You have not answered this question which relates to what permits, if any, you sought before the alleged discharge of fill or dredged material occurred in the six areas highlighted and circled on Exhibit #1. Please answer the original Question #9, repeated above in the first paragraph.

Additionally, in your May 13, 2013, response, you provided an Attachment D. Attachment D is only the cover page of the Final Site Inspection Report / Erie Army Depot / Ottawa County, OH / FUDS Property No. G05OH0027. Please provide the entire report.

10. Provide copies of all documents relating to whether you have ever applied for or received a permit issued pursuant to Ohio state law at the site, including, but not limited to the Ohio Environmental Protection Agency (OEPA). Documents may include, but are not limited to permits, permit application materials and related correspondence, or specific informational, educational or regulatory sources that address Ohio environmental laws addressing land, water or air.


In your May 13, 2013, response to this question, you avoided answering this question by citing to a letter from the Ohio Environmental Protection Agency's Federal Facilities Section, related email exchanges with the OEPA Federal Facilities Section, and an ARES, Inc. letter to OEPA's Federal Facilities Section. These documents are not responsive. Please answer the original Question #10 above in the first paragraph.

11. **New Request:** Please describe the role of ARES, Inc. at the site at issue and its relationship to EPG2, LLC.

12. **Renumbered Request:** Provide copies of all other information or documents that you deem relevant to this matter.

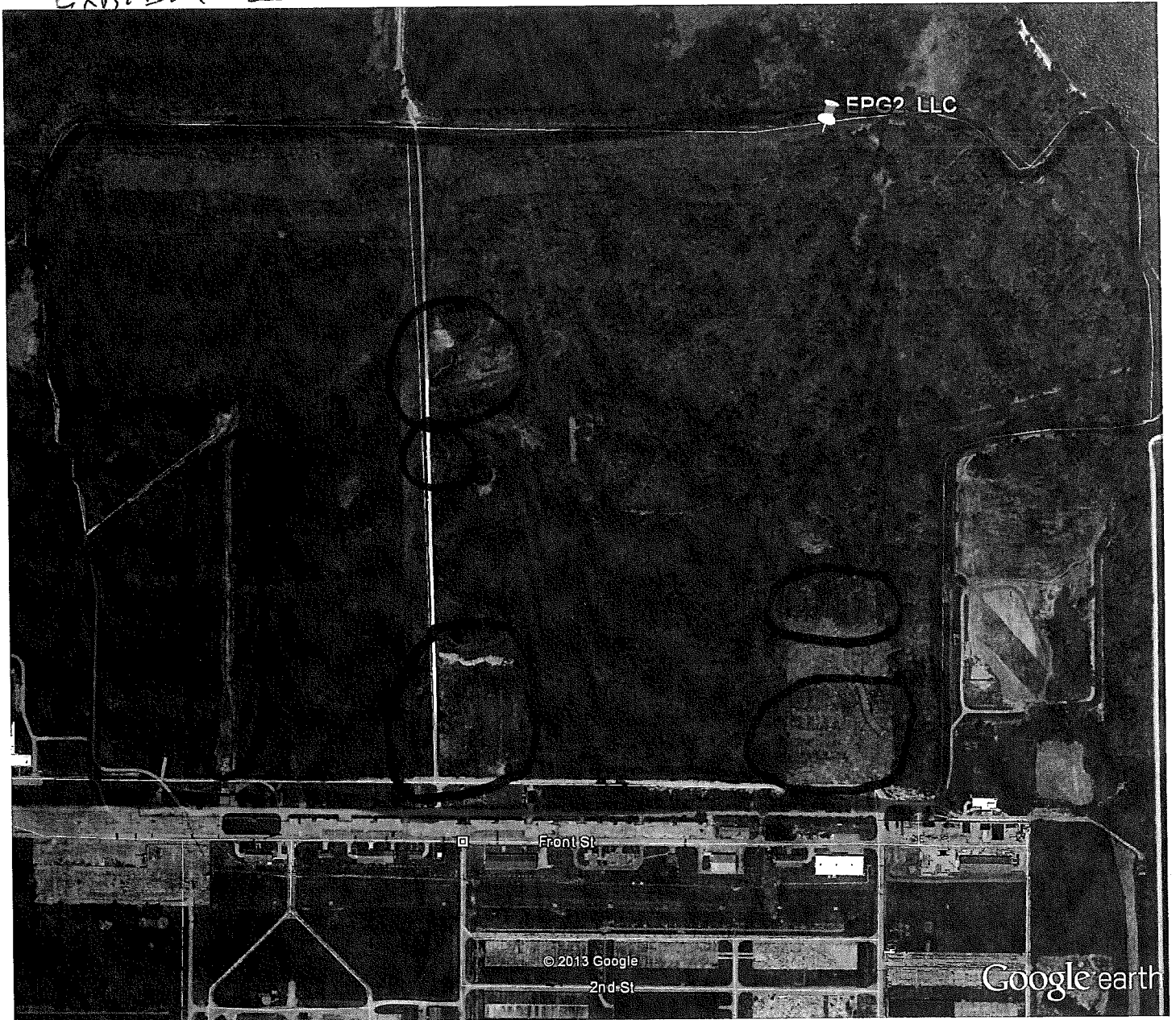
Please be advised that the submission of false statements may subject you to federal prosecution under 18 U.S.C. § 1001 and that this or any other failure to comply with the requirements of section 308 as requested by EPA may result in an enforcement action under section 309 of the CWA, which provides for specified civil or criminal penalties. EPA has the authority to use the information requested herein in an administrative, civil or criminal action.

Date: 7/17/13



Tinka G. Hyde
Director, Water Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Exhibit 1



Google Earth Pro

feet 2000
meters 700



○ - Areas of alleged discharge
of fill/dredge material

Site =

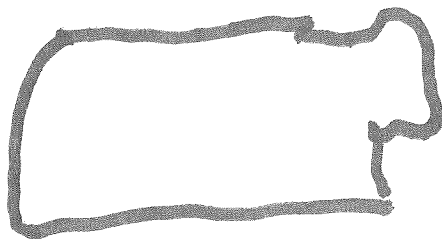


Exhibit 2

Corps of Engineers, Dept. of the Army, DoD

§ 328.3

For the hearing. Notice shall also be given to all Federal agencies affected by the proposed action, and to state and local agencies and other parties having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and provided to newspapers of general circulation for publication. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft environmental impact statement or environmental assessment.

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

Sec.

328.1 Purpose.

328.2 General scope.

328.3 Definitions.

328.4 Limits of jurisdiction.

328.5 Changes in limits of waters of the United States.

AUTHORITY: 33 U.S.C. 1344.

SOURCE: 51 FR 41250, Nov. 13, 1986, unless otherwise noted.

§ 328.1 Purpose.

This section defines the term "waters of the United States" as it applies to the jurisdictional limits of the authority of the Corps of Engineers under the Clean Water Act. It prescribes the policy, practice, and procedures to be used in determining the extent of jurisdiction of the Corps of Engineers concerning "waters of the United States." The terminology used by section 404 of the Clean Water Act includes "navigable waters" which is defined at section 502(7) of the Act as "waters of the United States including the territorial seas." To provide clarity and to avoid confusion with other Corps of Engineer regulatory programs, the term "waters of the United States" is used throughout 33 CFR parts 320 through 330. This section does not apply to authorities under the Rivers and Harbors Act of

1899 except that some of the same waters may be regulated under both statutes (see 33 CFR parts 322 and 329).

§ 328.2 General scope.

Waters of the United States include those waters listed in § 328.3(a). The lateral limits of jurisdiction in those waters may be divided into three categories. The categories include the territorial seas, tidal waters, and non-tidal waters (see 33 CFR 328.4 (a), (b), and (c), respectively).

§ 328.3 Definitions.

For the purpose of this regulation these terms are defined as follows:

(a) The term *waters of the United States* means

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

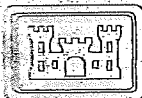
(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;

(6) The territorial seas;

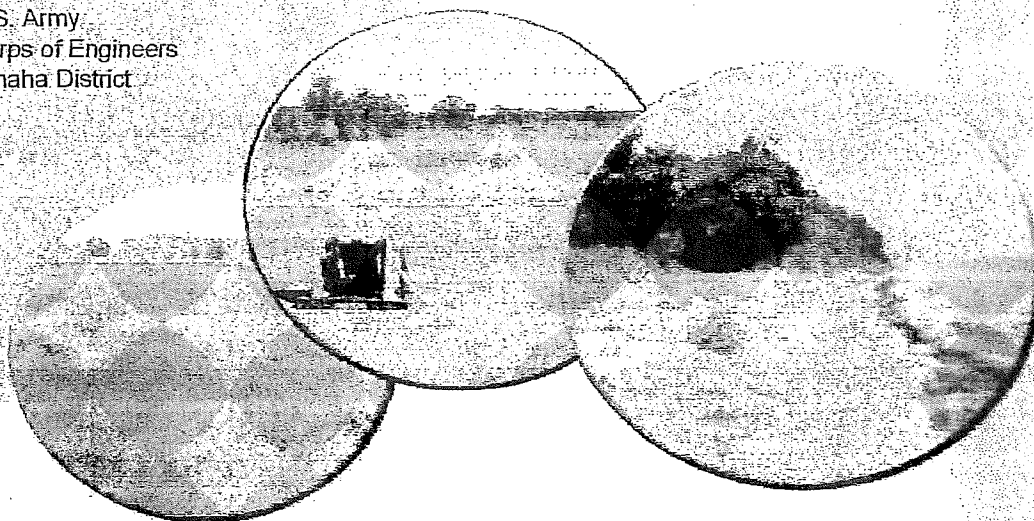
(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.

(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of

Attachment "D"



U.S. Army
Corps of Engineers
Omaha District



FINAL SITE INSPECTION REPORT

Erie Army Depot

Ottawa County, OH

FUDS Property No. G05OH0027

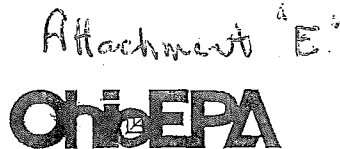
Site Inspections at Multiple Sites, NWO Region
Formerly Used Defense Sites
Military Munitions Response Program

Contract No. W912DY-04-D-0010
Delivery Order No. 003

June 2008

Shaw Environmental, Inc.
7604 Technology Way, Suite 300
Denver, CO 80237

The views, opinions, and/or findings contained in this report are those of the contractor and are not to be construed as official department of the Army position, policy, or decision, and are not to be used for official documentation.



State of Ohio Environmental Protection Agency

Southwest District

401 East Fifth Street
Dayton, Ohio 45402-2911

TELE: (937)285-6357 FAX: (937)285-6249
www.epa.state.oh.us

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

July 28, 2008

Mr. Herb Roder, President
ARES, Inc.
818 Erie Industrial Park
Port Clinton, Ohio

Dear Mr. Roder:

Per your request, attached please find a compact disk containing an electronic copy of the *Final Site Investigation Report, Former Erie Army Depot*, dated June 2008.

As discussed during our phone conversation, this report details the findings of the August 2006 investigation (site walk over and soil sampling) of the Wet and Dry Impact Areas, Locust Point Firing Area, the Lake Impact Area, and West Sister Island. This investigation is the first investigation conducted under the Military Munitions Response Program, a new program created in 2002 to investigate and address munitions contaminated sites. Any future actions (including the periodic beach removals) will now be conducted under this new program. This Site Investigation recommends further investigations for the Lake Impact Area, and a potential responsible party investigation of the wet and dry impact areas.

As you know, there have been several previous investigations of the former Erie Army Depot. Unfortunately, though data and information from the past studies could be used as background information, they could not be used to support further work at this site. Department of Defense policy stated that new investigations had to be conducted at munitions response sites before additional work could be performed.

Since the results of this site investigation are being used to plan future work at Erie Army Depot, we are providing a copy of the report for your use. As a party affected by future investigations and work at this site, we encourage you to review this information. As a stakeholder, Ohio EPA feels your concerns about this report are addressed before future work is initiated at the former Erie Army Depot site.

If you have any concerns or questions about this document, please contact me at (937) 285-6469.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bonnie B. Buthker".

Bonnie B. Buthker
Federal Facilities Section
Division of Emergency and Remedial Response

BBB/plh

Part of Attachment E

DEPARTMENT OF THE ARMY CORPS OF ENGINEERS
SUPPLEMENTAL AGREEMENT NO. 1 TO
DEPARTMENT OF THE ARMY
RIGHT-OF-ENTRY NO. W911XK-9-09-1001

THIS SUPPLEMENTAL AGREEMENT made and entered into this 15 day of April 2010, by and between EPG2, hereinafter called the "Grantor" and the UNITED STATES DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, hereinafter called the "Government".

WITNESSETH:

WHEREAS, the parties hereto entered into Department of the Army Right-of-Entry No. W911XK-9-09-1001, dated 24 November 2008, which allows for access in order to perform surface removal of Munitions and Explosives of Concern and perform such other work as may be necessary and incident to the implementation of the Defense Environmental Restoration Program, as more accurately described in the basic agreement; and

WHEREAS, by Supplement Agreement No. 1, the said right-of-entry will expire by its own terms on 15 April 2010:

WHEREAS, the Government has a continued need to use said land; and

WHEREAS, the Owner has expressed a willingness to extend the term until 15 April 2012.

HOW; THEREFORE, the said right-of-entry is modified in the following particulars, but in no others, effective 15 April 2010:

Paragraph no. 1 is modified by DELETING, there from,

"within the period of 8 December 2008 – 15 April 2010"

And SUBSTITUTING, in lieu thereof,

"within the period of 8 December 2008 – 15 April 2012"

EXCEPT AS MODIFIED ABOVE, all other terms and conditions of the right-of-entry remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement No. 1, as of the date first above written.

GRANTOR

Herbert J. Roder (SEAL)
Herbert J. Roder, President
[Type or Print Title] (SEAL)

Accepted:

UNITED STATES OF AMERICA

By:

VICTOR L. KOTWICKI
Chief, Real Estate Division
Detroit District